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# CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Addendum

## Initial report of the Principality of Monaco*

* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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Introduction

1. The Principality of Monaco signed the International Covenant on Civil and Political Rights on 26 June 1997 and ratified it on 28 August 1997; the Convention came into force in Monaco on 28 November 1997.

2. As a State party to the Covenant, Monaco is submitting its initial report to the Human Rights Committee in accordance with article 40.

## PART ONE

## I. LAND AND PEOPLE

3. Monaco is an independent and sovereign State adjoining a number of communes of the French department Alpes-Maritimes. It has a Mediterranean coastline.

4. The population of 29,972 includes 122 nationalities: 5,070 Monegasques, 12,047 French, and 5,000 Italians (source: most recent official census, 1990).

5. Monaco's total area is 195 hectares, of which approximately 40 have been reclaimed from the sea over the last 20 years.

6. The Principality comprises a single commune, Monaco, whose boundaries coincide with those of the State.

7. French is the official language, but Italian and English are also widely understood and spoken. The Monegasque vernacular is used by older inhabitants and taught to the younger generation at school. It may be studied as a baccalaureate option.

8. The official currency was the French franc through 31 December 1998. Monegasque coins of the same denominations as French coins will remain in circulation until 2002. Monaco introduced the euro on 1 January 1999, despite being a third country in relation to the European Union (and thus with regard to the process of monetary union leading to the creation of a euro zone). Monaco subsequently intends to issue coins denominated in euros bearing a Monegasque design.

9. The State religion is Roman Catholicism, but freedom of worship is guaranteed under article 23 of the Constitution.

## II. GENERAL POLITICAL STRUCTURE

10. The Constitution of 17 December 1962 declares that Monaco is a sovereign State "within the framework of the general principles of international law and special conventions with France".

11. The principle of government is a hereditary, constitutional monarchy.

12. The executive power, which derives from the high authority of the Prince, is exercised by the Secretary of State assisted by a Government Council composed of three councillors.

13. The National Council (Parliament), comprising 18 representatives elected by the Monegasque people, enacts legislation. Every year, the Government has an opportunity to explain and clarify its policy in the course of a parliamentary debate on the Budget Act.

14. There is also an elective municipal council responsible for running the city of Monaco (population register, hygiene, community development, etc.).

15. The 1962 Constitution enshrines the principle of the independence of the judiciary and states that the legality of administrative measures shall be supervised by a special body, the Supreme Court. It also emphasizes rigorous respect for human rights and abolishes the death penalty.

## III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

16. The entire Monegasque legal system is designed to guarantee respect for human rights.

17. The Constitution of 17 December 1962 abolishes the death penalty and enumerates fundamental rights.

18. The laws, especially the Criminal Code, Civil Code, Code of Criminal Procedure and Code of Civil Procedure, set forth the conditions for the enforcement and protection of those rights.

19. The courts ensure their implementation.

### A. JUDICIAL AND ADMINISTRATIVE AUTHORITIES HAVING JURISDICTION AFFECTING HUMAN RIGHTS

20. Pursuant to article 90 of the Constitution, the Supreme Court decides in sovereign capacity on the annulment, upon petition, of the validity of verdicts and indemnity in questions involving threats to the rights and freedoms guaranteed by Title III of the Constitution.

21. The courts (courts of first instance, courts of appeal and courts of review) ensure that the laws are implemented with strict respect for human rights, in accordance with the rules of protection set forth in the Codes.

22. The independence of judges is guaranteed by article 88 of the Constitution.

## B. REMEDIES AVAILABLE TO AN INDIVIDUAL WHO CLAIMS THAT ANY OF HIS RIGHTS HAVE BEEN VIOLATED; SYSTEMS OF COMPENSATION AND REHABILITATION FOR VICTIMS

23. In the event that any human right is violated by a legislative or statutory text or by a decision of the Administration, a remedy may be lodged with the Supreme Court.

24. If the alleged violation constitutes a crime or offence, its perpetrator, whether a private individual or civil servant, is brought before the courts.

25. In all cases, the court seized of the case awards compensation for the injuries sustained by the victim.

## C. PROTECTION OF THE RIGHTS REFERRED TO IN THE VARIOUS INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

26. The rights set forth in the various international instruments are protected as indicated above for all instruments to which the Principality has acceded.

## D./E. INCORPORATION OF THE HUMAN RIGHTS INSTRUMENTS INTO THE NATIONAL LEGAL SYSTEM

27. Human rights instruments, like all international treaties, must be signed and ratified by the Prince (Constitution, art. 14), following which they are given force of law by a Sovereign Order.

28. Only after having been given force of law in Monaco can the provisions of a treaty be invoked before the administrative authorities or courts of the Principality.

29. Finally, the Prince issues orders for the implementation of international treaties or agreements as necessary (Constitution, art. 66).

## F. INSTITUTIONS OR NATIONAL MACHINERY WITH RESPONSIBILITY FOR OVERSEEING THE IMPLEMENTATION OF HUMAN RIGHTS

30. There are no institutions or machinery specifically responsible for overseeing the implementation of human rights in Monaco.

31. The implementation of human rights is the responsibility of everyone. It is guaranteed by the hierarchical structure of the Administration and controlled by an independent court system.

## IV. INFORMATION AND PUBLICITY

32. The Government plans to transmit its report to the Principality's press centre and to disseminate it through Monaco's official Internet Web site ("Monaco.gov.mc") to the public at large, non-governmental organizations and associations in Monaco concerned with the questions addressed.

33. As part of the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, in 1998, the Princely Government organized a number of events to raise the awareness of as many people as possible (both schoolchildren throughout the Principality and the public at large) of issues related to the enforcement and promotion of human rights.

34. Thus, the Department of National Education, Youth and Sport decided to include in the curriculum for the academic year 1998/1999 courses to raise pupils' awareness and understanding of the basic principles contained in the Universal Declaration. One thousand copies of the "Manual for human rights education", published by UNESCO, were distributed in schools throughout the Principality.

35. As part of activities organized by the Fondation Prince Pierre de Monaco, writer Tahar Ben Jelloun gave a lecture on human rights in December 1998.

36. Human rights and the Universal Declaration were the theme of the address marking the opening of the court session in October 1988.

37. The last issue of 1998 of the free information pamphlet published by the Department of Tourism and Conferences of Monaco, entitled "L'Essentiel", contained an article on the history and scope of the Universal Declaration of Human Rights and on events organized by Monaco to celebrate its fiftieth anniversary. "L'Essentiel" is published every quarter by the Department and distributed at its headquarters, to most shops in the Principality and in the television guide of the daily newspaper "Nice Matin".

38. The telephone company Monaco Telecom has issued 50,000 copies of a special 50-unit telephone card in commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights.

39. A poster by the artist Folon was reissued by the Department of Cultural Affairs of Monaco to inform the public of the fiftieth anniversary of the Declaration. It was distributed throughout the Principality.

40. A postal logo referring to the fiftieth anniversary of the Declaration was issued by the Stamp Office of Monaco and affixed to all mail leaving the Principality, in December 1998.

## PART TWO

### I. RIGHT TO SELF-DETERMINATION (article 1)

Paragraph 1

41. The Principality of Monaco is committed to the right of peoples to self-determination, freely to determine their political status and freely to pursue their economic, social and cultural development.

Paragraph 2

42. The Principality of Monaco recognizes the right of peoples freely to dispose of their natural wealth and resources in accordance with international law.

Paragraph 3

43. The Principality of Monaco does not administer any non-self-governing or Trust Territories.

### II. UNDERTAKING BY STATES TO RESPECT AND TO ENSURE TO ALL INDIVIDUALS THE RIGHTS RECOGNIZED IN THE COVENANT (article 2)

44. On signing and ratifying the Covenant, the Government of Monaco made the following interpretative declaration of article 2, paragraphs 1, 2 and 3:

> "The Government of Monaco declares that it does not interpret the provisions of article 2, paragraphs 1, 2 and 3 as constituting an impediment to the constitutional rules on the devolution of the Crown, according to which succession to the Throne shall take place within the direct legitimate line of the Reigning Prince, in order of birth, with priority being given to male descendants within the same degree of relationship, or of those concerning the exercise of the functions of the Regency."

Paragraph 1

45. Fundamental freedoms are guaranteed by the Constitution without discrimination based on race, colour, sex, language, religion or political or other opinion.

46. The Principality is a State under the rule of law committed to the respect of liberties and fundamental rights (Constitution, art. 2).

47. Title III of the Constitution enumerates fundamental rights and freedoms (arts. 17 to 32) which comprise personal rights (such as legality of criminal penalties), rights of the individual in his or her relations with the outside world (right to marriage) and public freedoms (freedom of religion, freedom of association).

48. Consequently, the following rights are guaranteed to all inhabitants of the Principality:

Individual liberty and security (arts. 19 and 20)

Right to respect for human personality and dignity (art. 20, para. 2)

Right to inviolability of domicile (art. 21)

Right to secrecy of correspondence (art. 22)

Freedom of religion (art. 23)

Freedom of opinion (art. 23)

Right to own property (art. 24)

Freedom of labour (art. 25)

Right to trade-union action (art. 28)

Right to address petitions to the public authorities (art. 31).

49. The Monegasque Constitution contains no discrimination based on "national or social origin, property, birth or other status".

50. Article 32 of the Constitution establishes the principle that "foreigners enjoy in the Principality all the public and private rights which are not formally reserved to nationals", either by the Constitution or the laws. However, there are few rights which are reserved to nationals, and these are listed exhaustively. The aim is simply to reserve the full exercise of certain rights to nationals. This applies, in particular, to freedom of association (art. 33), the exercise of certain economic and legal activities (Act No. 1144 of 26 July 1991) and priority of access to employment (Constitution, art. 25, para. 2).

51. On signing and ratifying the Covenant, the Government of Monaco made the following interpretative declaration of article 2, paragraphs 1, 2 and 3:

> "The Government of Monaco declares that it does not interpret the provisions of article 2, paragraphs 1, 2 and 3 and article 25 as constituting an impediment to the constitutional rules on the devolution of the Crown, according to which succession to the Throne shall take place within the direct legitimate line of the Reigning Prince, in order of birth, with priority being given to male descendants within the same degree of relationship, or of those concerning the exercise of the functions of the Regency."

52. The purpose of this declaration, however, is simply to reaffirm the basic principle on which the Government is based, and can in no way result in the undermining of human rights and freedoms.

Paragraph 2

53. At the domestic level, the legislator has when necessary enacted legislative and statutory rules to guarantee the defence of fundamental rights such as trade-union action,[1] freedom of association[2] and the right to strike,[3] for example, and case law has clarified the various rights set forth in the Constitution.[4]

54. At the international level, the Principality has acceded to various conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination (New York, 1965) and the Convention on the Rights of the Child (New York, 1989). It is also considering acceding to the Convention on the Elimination of All Forms of Discrimination against Women (New York, 1979).

Paragraph 3

55. As fundamental rights and freedoms have been incorporated into the highest legal instrument, they apply to all and are guaranteed by the Supreme Court (art. 90).

56. Any administrative decision undermining the said rights and freedoms may be appealed before the Supreme Court, which may annul such a decision. The annulment has absolute authority of res judicata and is binding on everyone, including the Administration, which is required to execute the judgements rendered (Supreme Court, 20 February 1969, AUREGLIA heirs et al., volume corresponding to the date).

57. Furthermore, if the administrative decision at issue has caused injury, the victim may seek to hold the State responsible and obtain compensation for special and abnormal injury (Supreme Court, 1 February 1994, Monaco Landowners' Association, volume corresponding to the date).

58. If the violation of rights and freedoms has been committed by a private individual, the victim may appeal to the criminal courts in cases involving major offences or the civil courts for minor offences. The Criminal Code provides specific penalties for violations committed by officials in the exercise of their duties (Criminal Code, arts. 106-136).

## III. EQUAL RIGHT OF MEN AND WOMEN TO THE ENJOYMENT OF THE CIVIL AND POLITICAL RIGHTS SET FORTH IN THE COVENANT (article 3)

59. The civil and political rights set forth in the 1962 Constitution are the same for men and women.

60. Domestic law contains no discrimination towards women. In particular, women have the same political rights as men, i.e. they have the same right to stand for election and to vote.

61. Women also have the same rights as men in exercising their professional duties. For example, men and women workers receive equal pay for equal work and the regulations for civil servants explicitly prohibit discrimination based on sex.[5]

62. At the international level, the Principality has acceded to the International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, the International Convention of 4 May 1910 and the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children.[6]

63. The Principality is also considering acceding to the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.

## IV. RIGHT OF STATES PARTIES TO DEROGATE FROM THE OBLIGATIONS SET FORTH IN THE COVENANT (article 4)

64. The Constitution, which guarantees fundamental human rights, cannot be suspended (art. 93).

65. There are no provisions of domestic law which permit derogations from the obligations set forth in the Covenant.

## V. LIMITATIONS ON THE INTERPRETATION OF THE COVENANT (article 5)

66. Monegasque law covers and protects rights not specified in the Covenant (regarding the processing of personal information, for example).

67. There is no possibility of limiting the guarantees recognized.

## VI. RIGHT TO LIFE (article 6)

Paragraph 1

68. It should first of all be noted that the Catholic religion, apostolic and Roman, is the religion of the State (Constitution, art. 9).

69. Generally speaking, Title II, chapter 1, of the Criminal Code (arts. 220 et seq.) sets forth penalties for murder and threats to attack persons.

70. Similarly, anyone who helps a pregnant woman to abort is punished under article 248 of the Criminal Code (which prohibits and establishes penalties for abortion). However, because of the proximity of and the lack of control at the border, pregnancies may be terminated in France under French law.

71. Laws governing blood[7] and organ removal[8] contain provisions safeguarding human beings.

72. The right to life could be cited as an argument against the freezing of embryos for in vitro fertilization. This method of fertilization, however, has not yet been practised in Monaco. There are no regulations governing in vitro fertilization or medically-assisted procreation (M.A.P.). However, a bio-ethics bill is currently under study.

73. Finally and above all, the Principality has undertaken to protect human life by acceding to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948[9] and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.[10]

Paragraph 2

74. The Monegasque Constitution has abolished the death penalty (art. 20).

Paragraph 3

75. The Principality acceded to the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948 and acts accordingly.

76. The Principality has always taken positions in favour of peace and the peaceful settlement of disputes and against armed conflict.

77. It is a party to the Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare.[11]

78. Finally, the Principality has ratified the United Nations Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and Their Destruction of 18 September 1997.[12]

Paragraphs 4, 5 and 6

79. As the death penalty has been abolished, these three paragraphs require no commentary.

80. Clemency and amnesty are exclusive prerogatives of the Prince pursuant to article 15 of the Constitution and are exercised under the conditions set forth in articles 625 to 628 of the Code of Criminal Procedure.

## VII. TORTURE (article 7)

81. The Principality of Monaco acceded on 6 December 1991 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984.

82. The death penalty has been abolished in Monaco. Cruel, inhuman or degrading treatment is prohibited by article 20 of the Constitution. If committed, it would carry very heavy penalties.

## VIII. SLAVERY (article 8)

Paragraphs 1, 2 and 3

83. Slavery, servitude and forced labour are prohibited in the Principality. The Monegasque Constitution guarantees the fundamental rights and freedoms relating to human dignity set forth in the international legal instruments.

84. Monaco acceded to the Slavery Convention (Geneva, 25 September 1926) on 12 February 1928 and ratified the Protocol amending the Slavery Convention (New York, 7 December 1953) on 12 November 1954.

## IX. RIGHT TO LIBERTY AND SECURITY OF PERSON (article 9)

Paragraph 1

85. The functions of the judicial police are exercised under the authority of the Court of Appeals and under the direction of the Public Prosecutor by the officers of the judicial police (Code of Criminal Procedure, art. 31). All arrests are carried out under the strict control of a judge or a prosecutor, who is notified immediately after an arrest is made by the police services; prison detention can only be carried out pursuant to a judge's order (arbitrary detention is punishable under article 75 of the Criminal Code).

Paragraph 2

86. Any arrested individual is informed of the grounds for the arrest without delay.

Paragraph 3

87. Any individual under arrest shall be brought before a judge (most often an examining magistrate) or prosecutor within 24 hours following the arrest (Constitution, art. 19, para. 2, Code of Criminal Procedure, art. 399). If the person is brought before a prosecutor, the flagrante delicto procedure may be applied, and the individual is detained under an arrest warrant through his appearance before the criminal court within a period of three days. Pre-trial detention is the exception, liberty the rule.

Paragraph 4

88. An appeal, requiring a decision regarding release within a period of five days by three other judges, may be lodged at any time by an accused person in pre-trial detention (Code of Criminal Procedure, art. 189).

Paragraph 5

89. Articles 72 to 76 of the Criminal Code establish compensation for arbitrary acts undermining individual liberty.

## X. DEPRIVATION OF LIBERTY (article 10)

Paragraph 1

90. Prisons are under the authority of the Director of Judicial Services and are regularly visited by the judicial authorities. Prisoners are treated humanely and with respect for human dignity.

91. Violence committed by an official, public officer or judicial marshal constitutes offences or crimes punishable under article 126 of the Criminal Code.

Paragraph 2

92. Detainees are held in three separate quarters:

Men's quarter;

Women's quarter;

Quarter for minors under 21 (age of majority in Monaco).

93. Deprivation of liberty may take place only from the age of 13 onwards and in appropriate premises. Children are placed in solitary confinement at night and removed from contact with adult prisoners (Act. No. 740 and Implementing Ordinance No. 3031).

Paragraph 3

94. Convicted persons do not serve long sentences in the Principality of Monaco, but are transferred to French prisons where they have a full range of opportunities with regard to work, education, health care, etc.

## XI. IMPRISONMENT ON THE GROUND OF INABILITY TO FULFIL A CONTRACTUAL OBLIGATION (article 11)

95. Imprisonment for debt does not exist in Monaco.

## XII. CONDITIONS GOVERNING MOVEMENT, ENTRY, EXIT AND RESIDENCE IN MONEGASQUE TERRITORY (article 12)

Paragraphs 1, 2 and 3

96. Monegasque and French nationals have complete liberty to enter and leave Monaco and to choose their residence.

97. Ordinance No. 3153 of 19 March 1964 sets the following conditions for foreigners' entry and stay in the Principality:

(i) Pursuant to an exchange of letters dated 15 December 1997 between the Monegasque and French authorities, amending certain provisions of the Franco-Monegasque Convention on good neighbourliness of 18 May 1963, any foreign national wishing to enter or reside in the Principality is required to observe certain rules.

(ii) Any person of foreign nationality desiring to enter Monegasque territory and remain there for a period of three months or less must be in possession of the document (passport, travel or identity paper) required for entry into French territory.

French nationals need simply hold a national identity card issued by the French Administration.

(iii) All foreigners, with the exception of French nationals, wishing to remain in Monaco for a period of more than three months or to establish residence there must meet the following requirements:

* Nationals of a State of the European Economic Area:

98. Nationals of a State of the European Economic Area[1] are exempt from applying for a permanent residence permit (visa d'établissement) in Monaco. In order to obtain a Monegasque temporary residence permit (carte de séjour), they must apply to the Residents' Section of the Department of Public Safety of the Principality and provide a number of documents.

* Nationals of a State which is not a member of the European Economic Area residing outside of France:

99. Such persons are required to apply to the French Consulate in their area for a Permanent residence permit.

100. After obtaining this permit, all foreigners over 16 years of age are required to apply to the Residents' Section of the Department of Public Safety for a Monegasque temporary residence permit within eight days of their arrival in the Principality.

101. To obtain the temporary residence permit, the same documents as those required for nationals of States of the European Economic Area must be supplied.

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[1] The provisions in question concern nationals of a State of the European Union, Norway and Iceland.

102. The following are exempt from applying for a temporary residence permit:

Career consuls accredited with HSH the Sovereign Prince and the members of their families;

Officials seconded under Franco-Monegasque conventions.

* Foreigners who are nationals of a State which is not a member of the European Economic Area, coming from France:

103. This group may be divided into two categories:

If the persons in question have been living in France for at least one year, they should submit their application for permanent residence in the Principality to the Consul-General of France in Monaco;

If the persons concerned have been living in France for less than one year, they should apply for permanent residence in the Principality to the Consul-General of France in the place where they reside immediately before settling in France.

Paragraph 4

104. Exile (Criminal Code, arts. 7, 17 and 20) is handed down by the criminal court for infamous crimes.

## XIII. CONDITIONS OF EXPULSION OF A FOREIGNER (article 13)

105. On signing and ratifying the Covenant, the Princely Government made the following interpretative declaration regarding article 13:

> "The Princely Government declares that the implementation of the principle set forth in article 13 shall not affect the texts in force on the entry and stay of foreigners in the Principality or of those on the expulsion of foreigners from Monegasque territory."

106. Pursuant to the Ordinance of 6 June 1867 on general police functions and on the bilateral Franco-Monegasque Convention of 18 May 1963, a measure of expulsion from Monegasque territory may be ordered by the Minister of State against any foreigner having an unfavourable reputation or likely to disturb public order in the Principality of Monaco.

107. This is an administrative measure which does not need to be substantiated and against which an appeal may be lodged with the competent Monegasque courts.

108. Violation of a measure of expulsion from Monegasque territory constitutes a criminal offence requiring an appearance before a criminal court.

109. There are two types of expulsion decisions:

Expulsion from Monegasque territory;

Refoulement from Monegasque territory.

*Expulsion from Monegasque territory is determined by a ministerial order which need not be published.

110. An expulsion decision results in the foreigner concerned being banned from the Principality of Monaco.

111. In addition, pursuant to article 13 of the Convention on good neighbourliness of 18 May 1963, any non-French foreigner who has been expelled from the Principality is banned from the departments of Alpes-Maritimes, Var and Alpes-de-Haute-Provence.

112. Consequently, a ministerial expulsion decision ultimately leads to the issue of prefectoral banning orders in the French departments concerned.

*Measures of refoulement from Monegasque territory are the responsibility of the Minister of State of the Principality, who signs an administrative decision to that end.

113. Refoulement measures lead to the foreigner concerned being prohibited from entering the Principality of Monaco.

114. Refoulement decisions may be suspended and even repealed, under certain circumstances, by decision of the Minister of State.

## XIV. ACCESS TO THE COURTS AND TRIBUNALS (article 14)

Paragraph 1

115. The Monegasque system of justice includes the traditional principles of two-tiered jurisdiction and collegiality. Every individual is guaranteed a hearing by competent, independent and impartial courts, equal treatment and a fair and public hearing. In criminal cases, proceedings take place in camera if public proceedings would appear to endanger public order or morals (Code of Criminal Procedure, arts. 292 and 293); the accused may nevertheless designate three persons to be admitted to the proceedings; decisions are always rendered in public. In camera proceedings are obligatory for cases involving minors under 18 years of age (Act No. 740 of 25 March 1963 on juvenile offenders, art. 8).

Paragraph 2

116. The principle of the presumption of innocence is respected at all stages of the criminal procedure.

Paragraph 3

Paragraph (a)

117. Every accused person is informed of the charges against him when he appears before a judge for the first time (Constitution, art. 19, Code of Criminal Procedure, art. 166).

Paragraph (b)

118. Accused persons in custody may communicate freely with counsel of their own choosing. There is no monitoring or restriction whatsoever of correspondence exchanged with counsel (Code of Criminal Procedure, art. 180).

119. Counsel may meet freely with a client in custody, subject to no prohibitions whatsoever (Code of Criminal Procedure, art. 183).

120. An accused person brought before a court in flagrante delicto shall have the right to request time to prepare his defence. The time period in question shall not be less than three days (Code of Criminal Procedure, art. 400).

Paragraph (c)

121. The law sets no minimum time period for rendering a judgement. However, article 186 of the Code of Criminal Procedure limits the duration of pre-trial detention to a renewable two-month period.

122. Generally speaking, cases involving crimes and offences are tried without undue delay.

Paragraph (d)

123. On first appearing before a judge, an accused is informed of his right to be assisted by counsel of his own choosing or to request to have legal assistance assigned to him free of charge (Code of Criminal Procedure, arts. 166, 374-1 and 375).

124. A lawyer must be present in cases involving minors under 18 years of age (Code of Criminal Procedure, art. 166 and Act No. 470 on juvenile offenders, art. 8).

125. A lawyer must also be present in criminal cases (Code of Criminal Procedure, art. 274).

126. All accused persons have the right to be tried in their presence.

127. An accused person who is liable to a custodial penalty must be tried in his presence. He may, however, be authorized to send a representative (Code of Criminal Procedure, art. 377).

128. A person tried in his absence (judgement by default) may lodge an application to set the judgement aside and ask for his case to be tried again (Code of Criminal Procedure, arts. 378 et seq.).

Paragraph (e)

129. An accused may ask to hear any witness he deems necessary. The Monegasque system is an accusatory system, and witnesses are not examined by the accused or his counsel, but by the judge or president of the court. The accused or his counsel may, however, ask the judge or president to ask the witnesses certain questions (Code of Criminal Procedure, arts. 125 et seq.).

Paragraph (f)

130. An interpreter is provided free of charge at all stages of the proceedings (Code of Criminal Procedure, arts. 139 and 327).

Paragraph (g)

131. An accused cannot be a witness in proceedings against him. He cannot take an oath and even should he lie such lies cannot be held against him.

132. In no case can he be forced to admit guilt.

Paragraph 4

133. Minors under 18 years of age are tried according to a specific procedure, and convictions can include various educational measures (Act No. 740 of 25 March 1963 on juvenile offenders).

Paragraph 5

134. On signing and ratifying the Covenant, the Monegasque Government made the following interpretative declaration regarding article 14, paragraph 5:

> "The Princely Government interprets article 14, paragraph 5, as embodying a general principle to which the law can introduce limited exceptions. This is particularly true with respect to certain offences that, in the first and last instances, are under the jurisdiction of the police court, and with respect to offences of a criminal nature. Furthermore, verdicts in the last instance can be appealed before the Court of Judicial Review, which shall rule on their legality."

135. All judicial decisions may be contested by means of an appeal either before the same court in cases of judgement by default (application to set aside) or before a higher court (application for judicial review of the facts).

Paragraph 6

136. There is no provision in Monaco for compensation for miscarriages of justice.

Paragraph 7

137. Monegasque legislation includes the principle that an individual acquitted or convicted of an offence cannot be prosecuted again for the same offence (Code of Criminal Procedure, arts. 10 and 351).

## XV. WRONGFUL ACTS OR OMISSIONS (article 15)

Paragraphs 1 and 2

138. The principle of the legality of crimes and penalties is provided for in article 20 of the Constitution and affirmed in article 4 of the Criminal Code.

## XVI. RIGHT OF EVERYONE TO RECOGNITION AS A PERSON (article 16)

139. All Monegasques and persons living in the Principality enjoy civil rights in Monaco (Civil Code, arts. 7 and 8). Everyone, without exception, enjoys recognition as a person.

140. The only restrictions on the exercise of civil rights are those which may result from legislation (minor children, for example) or judicial decisions (regarding, for example, adults placed under guardianship).

## XVII. RESPECT FOR PRIVACY, FAMILY, HOME,CORRESPONDENCE, HONOUR AND REPUTATION (article 17)

Paragraphs 1 and 2

141. The right to respect for privacy and family is guaranteed by article 22 of the Constitution and reaffirmed in article 22 of the Civil Code.

142. Article 22 of the Civil Code stipulates that the right to privacy and family is protected for all persons, living or deceased.

143. Interference with privacy or family is punishable by imprisonment and fines under articles 308-2 to 308-5 of the Criminal Code.

144. By way of example, the following offences against the right to privacy and family are punishable: breach of domicile by an official (Criminal Code, art. 123) or any other individual (art. 124), breach of professional secrecy (art. 308), interference with privacy and family by means of wiretapping, pictures, public disclosure, etc. (arts. 308-2 to 308-5), breach of confidentiality of correspondence (arts. 343 and 344), insults and defamation (Ordinance of 3 June 1910 on freedom of the press, arts. 34 and 35) and violations of Act No. 1165 of 23 December 1993 governing the processing of personal information.

## XVIII. RIGHT TO FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION (article 18)

Paragraphs 1 to 4

145. Freedom of thought, conscience and religion is guaranteed by article 23 of the Constitution of 17 December 1962. Full freedom is guaranteed and protection provided: articles 205 to 208 of the Criminal Code characterize and punish offences relating to interference with freedom of religion.

## XIX. RIGHT TO FREEDOM OF OPINION AND EXPRESSION (article 19)

Paragraphs 1, 2 and 3

146. Freedom of opinion and freedom of expression are guaranteed by article 23 of the Constitution of 17 December 1962: "Freedom of religion, of its public exercise, and the freedom to express opinions on all matters are guaranteed, except the repression of offences committed in the exercise of these liberties. No one may be forced to participate in acts and ceremonies of any religion nor to observe its days of rest."

147. Freedom of the press in particular is defined by the Sovereign Ordinance of 3 June 1910 on freedom of the press.

148. With regard to radio and television, on ratifying the International Covenant on Civil and Political Rights the Princely Government made the following interpretative declaration in respect of article 19: "The Princely Government declares that it considers article 19 to be compatible with the existing system of monopoly and authorization applicable to radio and television corporations."

149. In practice, however, modern broadcasting techniques enable the inhabitants of the Principality to receive a large number of stations broadcast in various languages (see Act No. 1122 of 22 December 1988 concerning the distribution of radio and television programmes).

150. Literary and artistic works are protected by numerous domestic laws (Sovereign Ordinance of 27 February 1889 on the protection of literary and artistic works; Act No. 491 of 24 November 1948 on the Protection of Literary and Artistic Works; Sovereign Ordinance No. 3778 of 27 November 1948 applying the provisions of the Act on the Protection of Literary and Artistic Works to radio broadcasts; Sovereign Ordinance No. 3779 of 27 November 1948 concerning copyright in the field of radio broadcasting; Sovereign Ordinance No. 625 of 15 October 1952 concerning copyright protection for the nationals of the United States of America; Ministerial Order No. 87-007 of 12 January 1987 setting forth implementing procedures for article 11-1 of Act No. 491 of 24 November 1948 on the protection of literary and artistic works) and by international laws (the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961, was given force of law in Monaco by Sovereign Ordinance No. 8488 of 26 December 1985).

151. Exceptions to freedom of expression are specified by law and are justified by the protection of individual rights or the safeguarding of general interests. Defamation and insults are punishable under the Sovereign Ordinance of 3 June 1910 on freedom of the press. Similarly, Act No. 1109 of 16 December 1987 added articles 308-1 to 308-5 to the Criminal Code, setting forth specific penalties for the interference with privacy by the media.

## XX. PROPAGANDA FOR WAR, ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED (article 20)

Paragraphs 1 and 2

152. The Ordinance of 3 June 1910 on freedom of the press sets forth punishment for anyone who "through speeches, shouts or threats in public places or meetings, or by writings, the sale or distribution of printed matter, the sale or display of printed matter in public places or meetings, or the public display of signs or posters" (art. 15) incites to theft, murder, pillaging or war (art. 16), arouses the scorn or hatred of some inhabitants for others (art. 25) or commits the offence of indecent assault (art. 26).

153. The Criminal Code establishes penalties for anyone who arouses the "citizens to civil war by arming them or encouraging them to arm themselves against each other, or causes devastation, killings and looting in the territory of the Principality" (Criminal Code, art. 65).

## XXI. RIGHT OF PEACEFUL ASSEMBLY (article 21)

154. The right of peaceful assembly is constitutionally guaranteed: "Monegasques have the right to assemble peacefully without arms in accordance with the laws which may regulate the exercise of this right without making it subject to prior authorization. This freedom does not extend to open-air meetings, which remain subject to police laws" (Constitution, art. 29).

155. On signing and ratifying the Covenant, the Monegasque Government made the following interpretative declaration in respect of articles 21 and 22:

> "The Princely Government, recalling that the exercise of the rights and freedoms set forth in articles 21 and 22 entails duties and responsibilities, declares that it interprets these articles as not prohibiting the application of requirements, conditions, restrictions or penalties which are prescribed by law and which are necessary in a democratic society to national security, territorial integrity or public safety, the defence of order and the prevention of crime, the protection of health or morals, and the protection of the reputation of others, or in order to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary."

156. This declaration is quite explicit and in no way takes issue with the rights and freedoms in question; it simply provides them with a legal framework (see Act No. 1072 of 27 June 1984 on associations).

## XXII. RIGHT TO FREEDOM OF ASSOCIATION (article 22)

Paragraphs 1, 2 and 3

157. Freedom of association is guaranteed by article 30 of the Constitution, which reads: "Monegasques have the right to associate freely with respect for the rules of the Constitution."

158. On signing and ratifying the Covenant, the Monegasque Government made the following interpretative declaration in respect of articles 21 and 22:

> "The Princely Government, recalling that the exercise of the rights and freedoms set forth in articles 21 and 22 entails duties and responsibilities, declares that it interprets these articles as not prohibiting the application of requirements, conditions, restrictions or penalties which are prescribed by law and which are necessary in a democratic society to national security, territorial integrity or public safety, the defence of order and the prevention of crime, the protection of health or morals, and the protection of the reputation of others, or in order to prevent the disclosure of confidential information or to guarantee the authority and impartiality of the judiciary."

159. Act No. 1072 of 27 June 1984 on associations sets forth the conditions for the exercise of this freedom, by both nationals and foreigners.

160. Concerning the right to organize, Ordinance-Law No. 399 of 6 October 1944 (amended by Act No. 541 of 15 May 1951) authorizes the establishment of trade unions as follows: "Monegasque and foreign wage-earners regularly authorized to work in the Principality may join trade unions which they have established for the study and defence of their economic or professional interests and for representing the profession and its members" (art. 1, para. 1).

161. In addition, article 28 of the 1962 Constitution lays down the right to trade-union action as follows: "Every person may defend the rights and interests of his profession or function by trade union action."

162. Interference with the free exercise of the right to trade-union action is subject to criminal penalties under Act No. 417 of 7 June 1945 on protection of trade-union rights, amended by Act No. 1005 of 4 July 1978 and by Act No. 957 of 18 July 1974 on the exercise of trade-union rights.

163. However, the Supreme Court has stated that the inclusion of this right in the Constitution in no way signifies that the State is under the obligation to provide the means for exercising it (Supreme Court, 14 June 1983, Trade Union of the staff of Princess Grace Hospital, volume corresponding to date).

## XXIII. MARRIAGE AND THE FAMILY (article 23)

Paragraph 1

164. Monegasques receive financial assistance through the following State-sponsored family incentives:

Family loans are awarded to young couples to help them establish their households;

A childbirth allowance is provided on the birth of each child;

A "female-headed household" allowance is provided, on a monthly basis and subject to financial need, to lone parents raising children;

A "mothers at home" allowance is paid, on a monthly basis and subject to financial need, to mothers who interrupt their professional activities in order to rear their children.

Paragraph 2

165. Pursuant to article 117 of the Civil Code, the minimum age for marriage is 18 for men and 15 for women; exemptions may be granted by the Prince for serious reasons.

Paragraph 3

166. All marriages require the spouses' consent (Civil Code, art. 116).

167. Marriage by minors requires, in addition, the consent of the father or mother or, in some cases, an ascendant, the Family Counsel or the Guardianship Judge (Civil Code, arts. 118 to 122).

168. Minors may conclude a marriage contract with the assistance of persons authorized to consent to the marriage. In the absence of such assistance, the marriage contract may be annulled at the minor's request in the year in which he attains majority (Civil Code, art. 1139).

Paragraph 4

169. Pursuant to article 182 of the Civil Code, "the husband is the head of the family. He exercises this function in the common interest of the couple and their children. The wife assists the husband in providing the family with moral and material guidance, assuring its maintenance, rearing the children and preparing them for life in society. The wife replaces the husband in performing the functions of the head of family when the husband is unable to express his will."

170. Article 301 of the Civil Code vests the father with parental authority over the children. Parental authority is exercised by the mother if the father is prevented from doing so or has lost parental authority.

171. Thus Monegasque family law still gives greater importance to the husband. However, the wife is fully involved in family and parental responsibilities.

## XXIV. RIGHT OF THE CHILD TO MEASURES OF PROTECTION, TO BE REGISTERED IMMEDIATELY AFTER BIRTH AND TO HAVE A NAME AND A NATIONALITY (article 24)

172. Under Monegasque law, civil majority is attained at age 21 (Constitution, art. 53) and a "child" is understood to be a person who has not attained the age of 21 (Civil Code, arts. 298 and 410-1).

Paragraph 1

173. It should first of all be noted that the Principality is a party to the Convention on the Rights of the Child of 20 November 1989, which was given force of law in Monaco by Sovereign Ordinance No. 11-003 of 1 September 1993. Implementing legislation is due to be enacted.

174. In addition, Monegasque legislation provides specific measures of protection for minors.

175. Article 27 of the Constitution provides Monegasques with the right to free primary and secondary education, which was extended to all inhabitants of the Principality (Act No. 826 of 14 August 1967 on education).

176. Children are also protect in civil matters through the educational assistance measures set forth in articles 317 to 322 of the Civil Code, which enable the Guardianship Judge to take action whenever the health, security, morality or education of a minor, whatever his nationality, is endangered.

177. Minors under 18 years of age are provided with protection in criminal matters under Act No. 740 of 25 March 1963 on juvenile offenders (amended by Act No. 894 of 14 July 1970), whose implementing procedures are set forth in Sovereign Ordinance No. 3031 of 12 August 1963.

Paragraph 2

178. The birth of a child must be declared as provided in articles 44 et seq. of the Civil Code. Violations of the provisions of the Civil Code regarding the declaration of births and issue of birth certificates are punishable by prison terms and fines under articles 281 and 282 of the Criminal Code.

179. The birth certificate (public document) must be drawn up within four days of the birth (art. 44). It must always bear the name of the child which is that of his parents (art. 46).

180. However, natural children, born out of wedlock, may be declared with one or both of the parents' names omitted (art. 46, para. 2).

181. The identity of a foundling's parents may remain unknown despite a systematic inquiry by the police services at the request of the judicial authorities. In such cases, the child is given a name by the Registrar (art. 47).

182. Finally, a mother has the possibility of placing her child with the child welfare services at birth and asking that the birth be kept secret. In such cases the parents' names do not appear on the birth certificate (art. 47).

183. The name of a child may be legally changed, in particular in cases of adoption or recognition subsequent to the birth.

Paragraph 3

184. The right to acquire a nationality at birth is set forth in article 7 of the United Nations Convention on the Rights of the Child and reinforced by the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws of 12 April 1930 (given force of law in Monaco by Sovereign Ordinance No. 1999 of 18 June 1937).

185. On ratifying the United Nations Convention on the Rights of the Child, Monaco made the following declaration in respect of the right to acquire a nationality at birth:

> "The Principality of Monaco declares that this Convention, especially article 7, shall not affect the rules laid down in Monegasque legislation regarding nationality."

186. The purpose of this declaration is to reaffirm the fundamental principle of Monegasque law that nationality is acquired jus sanguinis through the father (Constitution, art. 18), although other means of acquiring nationality may be determined by law (Act No. 1155 of December 1992 on nationality).

## XXV. RIGHT TO TAKE PART IN THE CONDUCT OF PUBLIC AFFAIRS, TO VOTE AND TO BE ELECTED AND TO HAVE ACCESS TO PUBLIC SERVICE (article 25)

Paragraphs (a) and (b)

187. On signing and ratifying the Covenant the Princely government made the following interpretative declaration in respect of article 25:

> "The Government of Monaco declares that it does not interpret the provisions of article 25 as constituting an impediment to the constitutional rules on the devolution of the Crown, according to which succession to the Throne shall take place within the direct legitimate line of the Reigning Prince, in order of birth, with priority being given to male descendants within the same degree of relationship, or of those concerning the exercise of the functions of the Regency."

188. The declaration reaffirms the fact the Government is based on the principle of a hereditary and constitutional monarchy, which is compatible with the representation of the citizens within a National Council and Communal Council having separate and specific areas of competence.

The National Council

189. The Constitution provides the National Council with extensive legislative and budgetary powers (arts. 53-74).

190. It is mainly responsible for enacting laws (art. 66) and voting the budget (art. 60) and it is even partially vested with constituent power (art. 94).

191. The Council consists of 18 members elected for five years by universal direct suffrage and by list vote (art. 53), by citizens who have possessed Monegasque nationality for at least five years, with the exception of those deprived of the right to vote for any of the causes set forth in the National and Communal Elections Act.[13]

192. Persons of both sexes aged 25 and over are eligible to vote.

193. Equality between men and women is fully respected in electoral matters.

194. It should be emphasized that, although the National Council is elected by the Monegasque electoral body alone, it takes the interests of all residents into consideration and allows them to attend its meetings. Its debates are also published in full in the Official Journal, the "Journal de Monaco".

195. Finally, all inhabitants of the Principality have the right of petition (art. 31).

The Communal Council

196. The territory of the Principality forms a single commune (Constitution, art. 78) which is administered by a municipality consisting of a Mayor and 14 associates elected for four years by universal direct suffrage and by list vote (art. 80), by the same electors as the National Council and under the same conditions as those provided in the 1968 Act.[14]

197. Like the National Council debates, discussions in the Communal Council on the affairs of the commune are public (Constitution, art. 86).

Paragraph (c)

198. The Monegasque Government entered the following reservation to article 25 of the International Covenant on Civil and Political Rights in order to emphasize the priority of access to employment given to nationals under article 25, paragraph 2 of the Constitution:

"The Princely Government formulates a reservation concerning article 25, which shall not impede the application of article 25 of the Constitution and of Order No. 1730 of 7 May 1935 on public employment."

199. However, the rules of access to public service, set forth in Act No. 975 of 12 July 1975 for State employees and in Act No. 1096 of 7 August 1986 for employees of the commune, contain no discrimination whatsoever; (the Principle of equality of the sexes is explicitly set forth in article 17 of the Civil Service Statutes).

200. Access to public service is by competitive examination only.

## XXVI. PROTECTION OF ALL PERSONS BEFORE THE LAW (article 26)

201. Article 17 of the Constitution establishes the principle that all Monegasques are equal before the law.

202. On signing and ratifying the Covenant, the Princely Government made the following interpretative declaration regarding article 26:

"Article 26, together with article 2, paragraph 1, and article 25, is interpreted as not excluding the distinction in treatment between Monegasque and foreign nationals permitted under article 1, paragraph 2, of the International Convention on the Elimination of all forms of Racial Discrimination, taking into account the distinctions established in article 25 and 32 of the Monegasque Constitution."

203. In making this declaration, the Government wished to note that certain rights are specifically reserved to nationals. They are, however, exhaustively determined by law. The principle concerned is the following: foreigners enjoy in the Principality the same public and private rights (Constitution, art. 32 and commentary on art. 2 of the Covenant) as nationals (for example, right to own property, freedom of association); all are protected by the constitutional principle of legality.

## XXVII. RIGHTS OF ETHNIC, RELIGIOUS OR LINGUISTIC MINORITIES (article 27)

204. There are no specific provisions in Monegasque legislation governing this area.

205. The concept of "national minority" does not exist under Monegasque law and would be difficult to apply in Monaco. Monegasque nationals number only 5,070 of the 29,972 inhabitants and are therefore a minority in their own country. Foreigners represent more than 80 per cent of the population of the Principality; there are nearly 122 different nationalities in Monaco (the French and Italian communities being the largest).

206. It is reiterated that freedom of religion is guaranteed by article 23 of the Constitution; French is the official language (Constitution, art. 8), but all foreign languages are freely spoken in the territory.

207. Consequently, the Principality is not concerned by article 27 of the Covenant.

Notes

[1] The legislator has taken steps to protect the exercise of trade-union action, set forth in article 28 of the Constitution, and to lay down criminal penalties for any attempt to prevent it (Act No. 417 of 7 June 1945 on the protection of trade-union rights, amended by Act No. 1005 of 4 July 1978, and Act No. 957 of 18 July 1974 concerning the exercise of trade-union rights).

[2] Act No. 1072 of 27 June 1984 on associations.

[3] Act No. 1025 of 1 July 1980.

[4] Examples are the principle of equality (Supreme Court, 31 January 1975, WEILL, volume corresponding to the date), freedom of expression (Supreme Court, 13 August 1931, CHIABAUT, volume corresponding to the date), right to own property (Supreme Court, 3 June 1970, S.C.I. Patrici.. volume corresponding to the date), trade-union action (Supreme Court, 14 June 1983, Princess Grace Hospital Staff Union, volume corresponding to the date).

[5] "These Regulations apply without distinction to both sexes, with the exception of measures specifically required by the nature of the duties involved" (Act No. 975 of 12 July 1975 relating to regulations for civil servants).

[6] The Convention Additional to the Agreement and to the International Convention for the Suppression of the Traffic in Women and Children was given force of law by the Sovereign Ordinance of 29 February 1932.

[7] Act No. 972 of 10 June 1975 on the therapeutic utilization of human blood, plasma and derivatives.

[8] Act No. 1073 of 27 June 1984 concerning organ removal from human bodies for therapeutic purposes.

[9] Convention for the Prevention and Punishment of the Crime of Genocide, signed at Lake Success on 9 December 1948, given force of law in Monaco by Sovereign Ordinance No. 351 of 14 February 1951.

[10] Convention of 10 December 1984 against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, given force of law in Monaco by Sovereign Ordinance No. 10-452 of 14 May 1992.

[11] The Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, was given force of law in Monaco by Sovereign Ordinance No. 3735 of 11 February 1967.

[12] The Convention, done at Oslo on 18 September 1997, was given force of law on 1 May 1999 by Sovereign Ordinance No. 13-938 of 15 March 1999.

[13] Act No. 839 of 23 February 1968 on national and communal elections, amended by Act No. 110 of 16 December 1987.

[14] Act No. 839 of 23 February 1968 on national and communal elections, amended by Act No. 110 of 16 December 1987.

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